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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,008

02/09/2004

Robert L. Doubler

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9085

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EXAMINER

WOODALL, NICHOLAS W

ART UNIT

PAPER NUMBER

3775

NOTIFICATION DATE

DELIVERY MODE

03/31/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@mspatents.com  
uspatents@mchaleslavin.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/776,008	<b>Applicant(s)</b> DOUBLER ET AL.	
	<b>Examiner</b> Nicholas Woodall	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to applicant's petition for revival and amendment received on October 4<sup>th</sup>, 2010.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-16 are rejected as understood under 35 U.S.C. 102(b) as being anticipated by Bramlet (U.S. Patent 6,183,474 B1).

Regarding claim 1, Bramlet discloses a device (see Figures 45 and 46) comprising an elongated cannulated shaft with tang exit holes and at least one deployable tang. Bramlet further discloses the device comprising an end cap bonded to one end of the shaft by a first bond (497; column 21 lines 48-64). Bramlet further discloses the device comprising a tang body (463) slidably disposed in one end of the shaft, wherein the external surface of the tang body is congruently shaped to restrict movement of the tang body to the longitudinal axis of the cannulated shaft. Bramlet further discloses a device wherein the at least one tang (460) includes a first end and a second end, wherein the first end is bonded to the tang body by a second bond. Bramlet further discloses a device wherein the second end of the at least one tang is capable of moving through one tang exit hole in the cannulated shaft upon longitudinal movement of the tang body (see Figure 45). Bramlet further discloses a device wherein the tang

body further includes a link capable of cooperating with a tool to generate longitudinal movement of the tang body. Regarding claims 2 and 8, it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claim 3, Bramlet discloses a device wherein the tang body is made from a first material, such as titanium, and the at least one tang is made from a second material, such as titanium (column 21 lines 1-3). The applicant does not require the two materials to be different materials. Therefore, the tang body and the at least one tang can be made from the same material and still read upon the claim limitation. Regarding claim 4, Bramlet discloses a device wherein the tang body is made from titanium and the at least one tang is also made from titanium. The tang body has a first stiffness and the at least one tang has a second stiffness, wherein the second stiffness is lower than the first stiffness. The examiner is interpreting the word stiffness to relate to the rigidity or flexibility of an object. Bramlet discloses a device wherein the tang body is rigid and wherein the tangs are thinner and longer and therefore less rigid in order to deform through the exit holes and into the bone of the patient. Regarding claim 5, Bramlet discloses a device wherein the at least one tang has a rectilinear shape defining planar sides having dimension, wherein the dimensions affect the stiffness of the at least one tang. Regarding claim 6, Bramlet discloses a device wherein the external surface of the tang body includes planar sections, wherein the first end of the at least one tang is bonded to a planar section (Figure 53 of the reference).

Regarding claim 7, Bramlet discloses a device wherein the cannulated shaft and the end cap are made from titanium. Regarding claim 9, Bramlet discloses a device wherein the link comprises a central aperture through the tang body having internal threads capable of engaging a draw bolt. Regarding claim 10, Bramlet discloses the invention as claimed and discussed above. Regarding claim 11, Bramlet discloses a device wherein the cannulated shaft, the end cap, and the plurality of tangs are made from titanium, wherein the tangs have a stiffness that is less than the stiffness of the tang body as discussed above. Regarding claim 12, Bramlet discloses a device wherein the cannulated shaft includes a plurality of intersecting planar internal walls and the tang body includes a plurality of intersection planar exterior surfaces, wherein the internal walls of the shaft engage the exterior surfaces of the tang body to limit the movement of the tang body in the longitudinal direction as discussed above. Regarding claim 13, Bramlet discloses a device wherein the number of tangs is equal to 4. Regarding the welding of the tangs to planar surfaces of the tang body it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claims 14-16, it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection. The applicant's argument that Bramlet does not disclose a device wherein a separate tang body is bonded to a tang body is not persuasive (see Figures 45 and 46) as discussed above in the new grounds of rejection. The new grounds of rejection were necessitated by the amendment making this office action **FINAL**.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/  
Examiner, Art Unit 3775